

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

AGRIPRO WHEAT, A UNIT OF
SYNGENTA SEEDS, INC. AND
SYNGENTA PARTICIPATIONS, AG

Plaintiff,

vs.

Case No. 8:06CV696

LEE NIKKEL d/b/a LEE NIKKEL'S
FARM and JON NIKKEL,

Defendants.

CONSENT JUDGMENT AND INJUNCTION

IT IS HEREBY STIPULATED AND AGREED on this 28th day of November 2006, by and between Plaintiff AgriPro Wheat, a unit of Syngenta ("AgriPro") and Defendants, Lee Nikkel d/b/a Lee Nikkel's Farm and Jon Nikkel ("Defendants"), collectively referred to as the "Parties," that:

- A. The Parties stipulate and agree that this Court is the proper court of venue and jurisdiction for the action alleged in AgriPro's *Complaint* and other pleadings pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1338, 1367, and 1391;
- B. The Parties have read and reviewed the stipulations and terms of this *Consent Judgment and Injunction* and understand the nature, terms, and contents of this *Consent Judgment and Injunction*; and
- C. The undersigned representative for Lee Nikkel's Farm certifies that he or she is fully authorized by Lee Nikkel's Farm to enter into the terms and

conditions of this *Consent Judgment and Injunction* and to fully bind Lee Nikkel's Farm to this *Consent Judgment and Injunction*.

- D. Defendants stipulate and agree that AgriPro owns or licenses valid and enforceable intellectual property rights to the wheat seed protected by virtue of various U.S. Plant Variety Protection Act Certificates, including those varieties known as: AP401 CL, AP502 CL, Benton, Beretta, Big Dawg, Bradley, Coronado, Crawford, Cutter, Douglas, Dumas, Elkhart, Fannin, Foster, Gibson, Gunner, Hanna, Hondo, Ivan, Jagalene, Knudson, Longhorn, Mallard, Mason, Mitchell, Natchez, Norpro, Ogallala, Patton, Pecos, Platte, Savage, Shelby, TAM 111, Thunderbolt, and Tomahawk;
- E. Defendants stipulate and agree that they have ^{inadvertently & m.} ~~knowingly~~ and ~~willfully~~ infringed AgriPro's certificates of plant variety protection;
- F. Defendants stipulate and agree that their actions as set forth in AgriPro's *Complaint* have caused irreparable harm to AgriPro;
- G. Defendants accept the following terms and conditions for purposes of settlement of this case and consent to the entry of a final Judgment according to such terms and conditions stated below, and Defendants agree to be subject to the continuing jurisdiction of the United States District Court in which the lawsuit is situated to enforce the terms of this *Consent Judgment and Injunction*. Accordingly, it is agreed by the Parties that a final judgment should be entered in this cause adopting the following terms.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT this *Consent Judgment and Injunction* shall be entered and Defendants shall immediately inform all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants of the followings terms and conditions of this *Consent Judgment and Injunction*:

INJUNCTION

1. PROHIBITED ACTIVITIES UNDER THE PLANT VARIETY PROTECTION ACT. Defendants and all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants are hereby enjoined and permanently restrained from selling, marketing, delivering, shipping, consigning, exchanging, or transferring title or possession of all varieties

owned or licensed by AgriPro, except as a class of registered or certified seed contained in an approved designer bag or in a bulk sale bag accompanied by appropriate documentation, which notifies the purchaser of the variety being purchased, as well as AgriPro's rights under the Plant Variety Protection Act. Further, Defendants agree to be permanently enjoined from using AgriPro's federally protected varieties as any component in non-certified wheat referred to as "variety not stated," "VNS," "bin run wheat," "pasture wheat," "mixed wheat," "feed wheat," or the like.

2. **DISPOSITION OF INFRINGING SEED.** Within one hundred twenty (120) days of the entry of this *Consent Judgment and Injunction*, Defendants shall cause to be destroyed or otherwise legally disposed of any and all infringing seed under their control or the control of their successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants. Defendants shall provide AgriPro's counsel with copies of appropriate documentation, such as bills of sale, bills of lading, weigh tickets, or other information reasonable and necessary, to establish that each has complied with this obligation and destroyed, sold, or otherwise legally disposed of all infringing seed within Defendants's control or possession.

3. **RIGHT OF INSPECTION.** AgriPro, by and through an agent, representative, and attorneys, shall have the right to inspect the physical premises of Defendants, including fields, buildings, storage facilities, and other locations under the ownership or control Defendants' successors, assigns, officers, agents, employees, representatives, and/or all other entities or persons in active concert or participation with Defendants. The right of inspection shall include the opportunity to take representative samples of crops, stored seed, or bagged seed available for sale to the public. The right of inspection shall also include the right to make undercover purchases. The right of inspection shall expire five (5) years following entry of this *Consent Judgment and Injunction*.

AWARD OF DAMAGES TO PLAINTIFFS

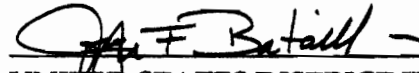
4. **AWARD TO PLAINTIFF.** Defendants shall be liable jointly and severally to AgriPro for damages in the amount of forty-nine thousand dollars (\$49,000.00) for the purposes of rectifying the harm to AgriPro caused by Defendants.

5. **DEFENDANT'S COSTS.** Defendants shall bear their own attorneys' fees and costs.

RELEASE OF CLAIMS

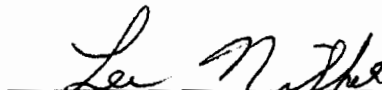
6. **RELEASE OF CLAIMS AND WAIVER OF TRIAL BY DEFENDANTS.** The Parties release and relinquish all rights, benefits, causes of action, and claims, if any, arising out of or pertaining to Defendants' unauthorized sale and use of AgriPro's wheat varieties, including release of AgriPro's authorized agents or attorneys, all such claims to be released occurring prior to the execution of this *Consent Judgment and Injunction* and which arise out of or relate to the matters which form the basis of AgriPro's *Complaint*. Further, Defendants waive their right to trial and appeal of all rights, benefits, causes of action, and claims arising out of or relating to the subject matter forming the basis of AgriPro's *Complaint*.

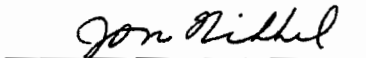
IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE
11/28/06

Dated this 11 day of Nov, 2006.

AGREED TO AND ACCEPTED:


Lee Nikkel, Individually and as
Representative for Lee Nikkel's Farm


Jon Nikkel